



March 12, 2004

**VIA FACSIMILE**

Ms. Jennifer J. Johnson  
Secretary, Board of Governors  
Federal Reserve System  
20<sup>th</sup> and Constitution Avenue NW  
Washington, DC 20551  
202/452-3102 (Fax)

**RE: Docket No. R-1176-Regulation CC and Check 21 Act**

Dear Ms. Johnson:

The Wisconsin Bankers Association (WBA) is the largest financial institution trade association in Wisconsin, representing 320 state and nationally chartered banks, savings and loan associations, and savings banks located in communities throughout the state.

The WBA appreciates the opportunity to comment on the proposed rule issued by the Board of Governors of the Federal Reserve System (FRB) regarding Regulation CC and the Check Clearing for the 21<sup>st</sup> Century Act (Check 21 Act or Act).

The Check 21 Act is intended to facilitate the broader use of electronic check processing without requiring any financial institution to change its current check collection practices. The proposed rules are intended to implement the provisions of Check 21 Act. The WBA applauds the efforts of those involved in the passage of the Act and the efforts of the FRB in drafting the rules. The WBA is very supportive of the proposed rules, and respectfully submits the following comments for the FRB's consideration.

**The WBA Urges The FRB To Allow A Sufficient Amount Of Time Between The Issuance Of The Final Rules And Mandatory Compliance With Such Rules.**

While it is true that the Act does not require any financial institution to change its check processing procedures, there are many institutions that will want to change their procedures in order to take advantage of the new law. These institutions will need a generous amount of time to upgrade equipment and test new processing procedures.

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Even ~~for~~ those institutions that do not intend to change ~~their~~ check processing procedures at this ~~time~~, some provisions of the Act apply to ~~all institutions~~ irrespective of whether procedural changes for check processing are implemented. For instance, ~~an~~ institution that does not create "substitute checks" but receives such ~~an~~ item ~~from~~ another must still make warranties to others to which it subsequently delivers that item for presentment, collection, return or otherwise provides to the customer.

In addition, an institution that provides a substitute check to a consumer ~~might~~ be required to provide an expedited recredit to the consumer if the consumer incurred a loss ~~due~~ to receipt of the substitute check rather ~~than~~ the original check.

Furthermore, ~~an~~ institution must provide a disclosure that describes ~~substitute~~ checks and substitute check rights to consumers ~~who~~ receive paid checks with ~~their~~ periodic account statements and consumers ~~who~~ receive substitute checks on a case-by-case basis.

Therefore, all financial institutions will need time to develop and institute procedures to deal with these various requirements. Thus, WBA again urges the FRB to provide institutions with a sufficient amount of time between the effective and mandatory compliance dates of the final rules.

**For Those Consumers Who Do Not Routinely Receive Paid Checks In Their Account Statement, Financial Institutions Should Be Able To Provide Consumer Awareness Disclosures At The Time The Institution Provides A Substitute Check.**

The FRB specifically requests comment on the timing of Consumer Awareness disclosures ~~for~~ those consumer customers who do not routinely receive paid checks with their account statements and have not previously received the disclosure from the institution. The FRB proposes two alternatives. The first alternative requires the institution to provide the disclosure at the time the consumer makes the request for a check ~~and~~ the institution will provide a substitute check. The second alternative requires the institution to provide the disclosure to the consumer at the time a substitute check is provided.

The WBA supports the second alternative. It may not be possible for ~~an~~ institution to comply with the first alternative because the institution ~~may not know~~ at the time of the request whether ~~an~~ original check, copy of a check or a substitute check will be provided to the consumer. Conversely, in the second alternative, the institution ~~will know what type of check is being provided~~ at the time it ~~actually~~ provides the check to the consumer. Therefore, the better option is the second alternative. In addition, it would be useful to incorporate flexibility into the second alternative by including

language that would **allow** for the delivery of this disclosure to occur no later **than** at the time the substitute **check** is provided to the consumer.

**For Those Consumers Who Routinely Receive Paid Checks In Their Account Statement Financial Institutions Should Be Able To Provide A One-Time Consumer Awareness Disclosure.**

For those customers who routinely receive **paid** checks with the account statements, the **proposal** requires the institution to provide a **Consumer Awareness** disclosure **at the** time the customer relationship is initiated for each consumer account **opened**. The WBA believes that **financial institutions** should be given the option to provide a one-time disclosure to the consumer at **the** time the **consumer** establishes a customer relationship with the institution rather **than** each time an existing customer opens an **account** with the institution. If the consumer no **longer** has a customer relationship, **then** the **financial** institution would be required to provide a new disclosure at such **time** the consumer subsequently establishes a customer relationship.

**The Proposed Changes Regarding Disclosures Under §229.15(A) Should Be Adopted Except To The Extent Of The Change In The Clear And Conspicuous Standard.**

The WBA supports the changes to Comment 1 to §229.15(a) **except to the** extent of the following sentence in the proposed comment regarding the clear and conspicuous standard: "A disclosure is clear and conspicuous if it is reasonably understandable and is designed to call attention to the nature and significance of the information in the disclosure (see the examples listed in §216.3(b)(2) of this chapter)." The WBA submitted comments to the FRB in **opposition** to proposed **changes** in the clear and conspicuous standards contained in other consumer regulations and opposes such change to Regulation CC. **Therefore**, the WBA **supports** the changes to the comment except to the extent aforementioned.

**ACH Debits Should Not Be Covered By The Act's §5(2) Warranty.**

The WBA agrees with the American Bankers Association and others when they stated in their comment letter dated **March 11, 2004**:

Section 5(2) warranty should not apply to a second debit that results from an ACH debit that is created with information from the original check or a substitute check. The Section 5(2) warranty provides that the bank, drawer, drawee or endorser will not be asked to make a "payment based on a check that the bank,

drawee, drawer or endorser has **already** paid." An ACH debit initiated with a check is not an "electronic version of the substitute check or **original** check" because the ACH debit represents a new payment transaction and is not **in any way** a continuation of a check **transaction**. **Similarly**, a payment for an ACH debit is not a "payment based on a check" because the ACH debit is processed **through** the ACH network **and** is subject to the ACH rules **and** consumer protections applicable to electronic funds transfers. These **ACH** and electronic **funds** transfer rules **provide** appropriate protection to the customer **whose** account was wrongly debited for **the ACH** debit **and** appropriate Liabilities **for** the originator of that ACH debit.

For these reasons, the FRB should not adopt the §5(2) warranty to apply to ACH debits.

**Interest Credit Should Be Reversed When A Consumer Makes An Invalid Recredit Claim.**

The FRB asks whether **interest credit to the consumer** should be **should be reversed** when the consumer's request for **recredit** is invalid. The WBA **resoundingly** responds "yes." There is absolutely no reason **why** a consumer should benefit in such circumstances.

**Conclusion.**

The WBA **applauds** the efforts of the FRB in drafting this proposal regarding Check 21, **and** requests that **these** comments be given careful consideration. **Once** again, **the WBA** appreciates the opportunity to comment on **this** important matter.

Sincerely,



Kristine Cleven  
Director-Legal